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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,041	10/24/2003	Evan W. Call	55508-296781	1521

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EXAMINER

SINGH, SUNIL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,041

Applicant(s)

CALL, EVAN W.

Examiner

Sunil Singh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-39 is/are allowed.
- 6) ☒ Claim(s) 1-17 and 26-31 is/are rejected.
- 7) ☒ Claim(s) 18-25 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/23/04; 5/3/04; 5/25/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 9-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not adequately describe how a cushion member surrounds the first and second cushion members, isolates the first and second cushion members by using a divider and is formed from a flexible material as called for in claims 9-11.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "30" has been used to designate both lower base member and upper base member (see page 11). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing

figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a) because they fail to show reference character "56" as described in the specification (page 15,16). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-6,9,11-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Lachenbruch et al. (US 6699266).

Lachenbruch et al. discloses a cushion (see col. 4 line 2) for a wheelchair having a top surface, the cushion comprising: a first cushion member (21); and a second cushion member (14-16) having a phase change material and a lubricant, the second cushion being positioned so that it is closer to the top surface of the cushion than the first

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cushion member. The second cushion member further comprises an enclosure (17) constructed of a flexible, moisture-resistant material that is formed to create an internal volume sized to accept and surround the phase change material and lubricant. With respect to claims 3, 4, a cover (23) sized and shaped to enclose the first cushion member and the second cushion member and wherein the cover forms at least a portion of the top surface and a bottom surface of the cushion.

At least one support rail cushion (see Fig. 3) wherein the support rail cushion includes a deformable filler material and a support rail cushion enclosure (23) made of a flexible, moisture-resistant material that is sized to accept and surround the filler material. The support rail cushion (see Fig. 4) is positioned so that it is closer to at least a portion of the back surface of the cushion than the second cushion member (14).

With regards to claim 9, a cushion member carrier (23) shaped to accept and substantially surround the first cushion member (21) and the second cushion member (14), it is a flexible material. A base member (22), wherein: at least a portion of the base member is formed of a polymeric foam; and the base member is positioned so that at least a portion of the first cushion (21) member and the second cushion member (14) are closer to the top surface of the cushion than the base member.

With regards to claim 13, the base member is located within a flexible and substantially moisture impervious material (23).

7. Claims 1-9, 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Denton (US 5687436).

Denton discloses a cushion for a wheelchair having a top surface, the cushion comprising: a first cushion member (30); and a second cushion member (60) having a phase change material and a lubricant, the second cushion being positioned so that it is closer to the top surface of the cushion than the first cushion member; the second cushion member further comprises an enclosure constructed of a flexible, moisture-resistant material that is formed to create an internal volume sized to accept and surround the phase change material and lubricant.

With respect to claim 3, the first cushion member is comprised of a deformable filler material and an enclosure (50) constructed of a flexible, moisture-resistant material, the enclosure being sized to accept and surround the filler material.

With regards to claim 4, a cover (50) sized and shaped to enclose the first cushion member and the second cushion member and wherein the cover forms at least a portion of the top surface and a bottom surface of the cushion.

At least one support rail cushion (40), wherein the support rail cushion includes a deformable filler material and a support rail cushion enclosure (42) made of a flexible, moisture-resistant material that is sized to accept and surround the filler material.

With regards to claim 12, base member is considered as members (40,20).

8. Claims 1-4, 9, 11, 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Augustine et al. or Hardy (US 5837002, 4981135).

Claim Rejections - 35 USC § 103

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 17, 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lachenbruch et al. in view of DeBellis et al. (US 5857749).

Lachenbruch et al. discloses the invention substantially as claimed. However, Lachenbruch et al. lacks a flexible enclosure surrounding the first cushion. DeBellis et al. teaches a flexible enclosure (50) surrounding a first cushion (30). It would have been considered obvious to one of ordinary skill in the art to modify Lachenbruch et al. to include an enclosure as taught by DeBellis et al. in order to prevent the cushion from getting wet due to sweat.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lachenbruch et al. in view of Hannagan et al. (US 5500965).

Lachenbruch et al. discloses the invention substantially as claimed. However, Lachenbruch et al. lacks a rail portion along the back portion of the cushion. Hannagan et al. teaches a rail portion (20) along the back portion of the cushion. It would have been considered obvious to one of ordinary skill in the art to modify Lachenbruch et al. to include the back rail portion as taught by Hannagan et al. in order to reinforce the edges of the cushion.

Allowable Subject Matter

12. Claims 32-39 are allowed.

13. Claims 18-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-4024. The examiner can normally be reached on Monday through Friday 8:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh
Primary Examiner
Art Unit 3673



SS

11/2/04